



December 7, 2001

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-5731

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155857.

The Texas Department of Criminal Justice (the "department") received a request for information relating to an inmate's visitation privileges, including records of any related investigation. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code.<sup>1</sup> We have considered the exceptions you raise and have reviewed the information you submitted. We also received correspondence from the requestor.<sup>2</sup>

Section 552.108(a)(2) excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not supply an explanation on its face, how and why this exception is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects information relating to a concluded investigation or prosecution that did not result in a conviction or a deferred adjudication. *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). In this instance,

---

<sup>1</sup>The Seventy-seventh Legislature renumbered former section 552.131, "Exception: Certain Information Relating to Inmate of Department of Criminal Justice," as section 552.134. The revision was not substantive. *See* Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., ch. 1420, § 21.001(53), 2001 Tex. Sess. Law Serv. 3970, 4309 (Vernon) (to be codified at Gov't Code § 552.134).

<sup>2</sup>*See* Gov't Code § 552.304 (providing that interested person may submit written comments stating reasons why information at issue in request for attorney general decision should or should not be released).

you state that the requested information relates to a criminal investigation pertaining to an inmate who is sentenced to death. You inform this office that the case was closed and did not result in a conviction or deferred adjudication. We find that you have demonstrated that section 552.108(a)(2) is applicable to the requested information.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information, including a detailed description of the offense, must be released under section 552.108(c), whether or not this information is actually located on the front page of a police report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We note, however, that the requestor claims a special right of access to the requested information under the Bilateral Convention on Consular Affairs between the United States of America and the United States of Mexico. You believe, however, that the department may not release these particular records to this requestor under this convention. Neither you nor the requestor provided a copy of the convention to this office. Thus, we are unable to determine whether the requestor has a right of access to the information at issue. If in fact the requestor has a right of access to the requested information under the convention, then the department must make the information available to him. If not, then the department may withhold the requested information under section 552.108(a)(2) of the Government Code, but must release basic information under section 552.108(c). As we are able to make a determination under section 552.108, we do not address section 552.134.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling,

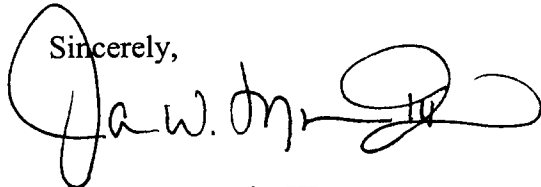
the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 155857

Enc: Submitted documents

c: Mr. Gilberto Velarde  
Consulate General of Mexico  
4507 San Jacinto Street  
Houston, Texas 77004  
(w/o enclosures)